

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
ICONCO,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 77-90

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a \$250 civil penalty for dust emissions allegedly in violation of respondent's Section 9.03(b) of Regulation I came for hearing before the Pollution Control Hearings Board, Chris Smith and Dave J. Mooney, convened at Seattle, Washington on September 26, 1977. Hearing Examiner William A. Harrison presided. Respondent elected a formal hearing.

Appellant, ICONCO, appeared by and through its Corporate Secretary, John E. Weber. Respondent appeared by and through its attorney, Keith D. McGoffin. Court reporter Gene Barker recorded

1 the proceedings.

2 Witnesses were sworn and testified. Exhibits were examined.  
3 From testimony heard and exhibits examined, the Pollution Control  
4 Hearings Board makes these

5 FINDINGS OF FACT

6 I

7 Respondent, pursuant to RCW 43.21B.260 has filed with this  
8 Hearings Board a certified copy of its Regulation I containing  
9 respondent's regulations and amendments thereto. Official notice  
10 thereof is hereby taken.

11 II

12 On May 19, 1977 in the course of demolishing the White-Henry-Stuart  
13 Building in Seattle, appellant, an experienced demolition contractor,  
14 caused dust emissions aggregating at least nine minutes in one hour  
15 and of an opacity ranging from 30-100%. These emissions resulted  
16 from the appellant's wrecking ball striking the remaining walls of the  
17 old building. While the appellant employed fire hoses to contain  
18 the dust caused by rubble striking the ground, no means was employed  
19 to contain dust arising from the impact of the wrecking ball. These  
20 emissions were observed by respondent's inspector who mailed a Notice  
21 of Violation which was received by appellant on May 24, 1977. A  
22 Notice and Order of Civil Penalty No. 3333, in the amount of \$250,  
23 was subsequently issued to appellant. From this penalty, appellant  
24 appeals. The appellant is an experienced demolition contractor.

25 III

26 Any Conclusion of Law hereinafter recited which should be

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 deemed a Finding of Fact is hereby adopted as such.

2 From these Findings the Pollution Control Hearings Board  
3 comes to these

4 CONCLUSIONS OF LAW

5 I

6 In emitting an air contaminant, dust, for more than three  
7 minutes in any one hour, which contaminant is of an opacity obscuring  
8 an observer's view to a degree equal to or greater than does smoke  
9 designated as No. 1 on the Ringelmann Chart, appellant violated  
10 Section 9.03(b) of respondent's Regulation I.

11 II

12 Long standing experience of appellant in the demolition business  
13 should have provided a practical method for controlling dust from  
14 the wrecking ball. If such controls cannot be devised, then in this  
15 and future instances, absent a variance or similar relief, appellant  
16 must expect to incur further penalties or other enforcement actions.  
17 In this case the penalty must be affirmed.

18 III

19 Any Finding of Fact which should be deemed a Conclusion of Law  
20 is hereby adopted as such.

21 From these Conclusions the Pollution Control Hearings Board  
22 makes this

23 ORDER

24 The \$250 civil penalty appealed from, and imposed by Notice and  
25 Order of Civil Penalty No. 3333, is hereby affirmed.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER

1 DONE at Lacey, Washington this 18<sup>th</sup> day of October, 1977.

2 POLLUTION CONTROL HEARINGS BOARD

3 Chris Smith  
4 CHRIS SMITH, Member

5 Dave J. Mooney  
6 DAVE J. MOONEY, Member

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26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER